

## **REMARKS/ARGUMENTS**

This Amendment and Response is responsive to the final Office action dated August 8, 2008, setting forth a shortened three-month statutory period for reply with three month extension of time expiring on February 9, 2009, since February 8, 2009, fell on a Sunday. This Amendment and Response is submitted on February 9, 2009; thus, a petition for a three month extension of time is filed with this Amendment and Response. Additionally, a Request for Continued Examination is filed concurrently with this Amendment and Response.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action.

Prior to entry of this Amendment and Response, claims 13-19, 50 and 55-58 are pending in the application, with claim 13 being an independent claim. In this Amendment and Response, claims 13, 14, 16, 18, 19, 50 and 57 are amended, and claims 55, 56, and 58 are cancelled. Accordingly, after entry of this Amendment and Response, claims 13-19, 50 and 57 are pending, with claim 13 being an independent claim.

### **I. Examiner Interview**

The Assignee thanks the Examiner for the informal telephone interview with Assignee's representative on January 27, 2009. During this interview, the Assignee's representative and the Examiner discussed the differences between the invention and the chamois taught in U.S. Pat. No. 6,565,702 to Forsyth et al. (hereinafter "Forsyth"). More particularly, it was discussed that Forsyth describes a chamois in which either 1) the foam layer has holes for receiving the foam pads therein (Figs. 15-18), or 2) a cloth layer is interposed between the foam layer and the foam pads (Figs. 19 and 20). It was also discussed that as shown in Fig. 3 of the current application, the chamois that the Assignee is seeking to claim does not have holes in the foam layer for receiving foam pads and does not have a cloth layer interposed between the foam layer and the foam pads.

### **II. Objections to Specification**

The specification is objected to for failing to provide proper antecedent basis for the claimed subject matter. More particularly, the Examiner asserts that the elements of "the first foam layer ... including a garment facing side contacting a body facing side of the first cloth layer", "the at least one foam pad including a garment facing side contacting a body facing side of the first foam layer and a body facing side contacting a garment facing side of the second

cloth layer", and "the garment facing side of the first foam layer contacts the body facing side of the first cloth layer; the first foam layer defines a first perimeter; the at least one foam pad defines a second perimeter; and the first perimeter encompasses the second perimeter" are not supported in the written description. These elements have been cancelled from claims 13 and 58. Accordingly, the Assignee respectfully submits that the objections to the specification are moot and respectfully requests withdrawal of the objections.

### III. Rejections under 35 U.S.C. § 102

Claims 13, 15, 17 and 55 are rejected under 35 U.S.C. § 102 as anticipated by Forsyth. For at least the following reasons, the Assignee respectfully disagrees with these rejections.

Independent claim 13 now recites the following:

the first continuous foam layer located between the first cloth layer and the second cloth layer and contacting the first cloth layer and the second cloth layer;

the at least one foam pad positioned between the first continuous foam layer and the second cloth layer;

the at least one foam pad contacting the first continuous foam layer and contacting the second cloth layer; and

the first continuous foam layer interposed between the first cloth layer and the at least one foam pad to prevent contact between the at least one foam pad and the first cloth layer.

The term "foam layer" has been modified by the word continuous, which is intended to refer to the fact that the foam layer does not include a hole for receiving the foam pad as shown, for example, in Fig. 3. Further support for the foam layer being continuous (i.e., without holes) may further be found at least in paragraph 23. More particularly, paragraph 23 states "[a] relatively high elasticity foam layer 206 is provided on cloth layer 204 and generally traverses the entire chamois 100 although elastic foam layer 206 does not need to be contiguous." In other words, this passage informs one skilled in the art that the foam layer may (or may not) be continuous.

Support for the other amendments may be found at least in Fig. 3 and in paragraphs 23-25. More particularly, Fig. 3 shows an exploded view of a chamois with a first cloth layer 204, at least one foam pad 308, a foam layer 206 interposed between the foam pad 308 and the first cloth layer 204, and a second cloth layer 210. Further, Fig. 3 shows the foam pad 308 positioned between the foam layer 206 and the second cloth layer 210. Yet further, the written description states in paragraph 25 that the anti-microbial material layer 216 is optional. Thus, one skilled in the art would understand that when the anti-microbial material layer 216 is omitted

and the chamois layers shown in Fig. 3 are assembled, the foam pad 308 would contact the foam layer 206 and the second cloth layer 210. Further, one skilled in the art would understand that because the foam pads 308 cover a smaller area than the foam layer 206 as shown, for example, in Fig. 3, the foam layer 206 would contact the first and second cloth layers 204, 210.

The Assignee respectfully submits that Forsyth does not teach or suggest a chamois as claimed in amended independent claim 13. Specifically, Forsyth describes two types of chamois. The first type is best shown in Figs. 15-18 of Forsyth, and the second type is best shown in Figs. 19 and 20.

With respect to the first type of chamois, Forsyth teaches forming a hole in the thin foam layer 36 (Figs. 15 and 17), 71 (Fig. 16) to receive foam pads 39, 40 (Figs. 15 and 17), 73 (Fig. 16). Thus, the Forsyth thin foam layer 36, 71 as taught with respect to the first type of chamois is not continuous as recited in claim 13. Further, because the Forsyth foam pads 39, 40, 73 are received in through-holes formed in the Forsyth thin foam layer 36, 71, the Forsyth foam pads will contact both cloth layers 35, 41 (Figs. 15 and 17), 70, 74 (Fig. 16) of the Forsyth chamois. In other words, the Forsyth thin foam layer does not prevent contact between the Forsyth foam pads 39, 40, 73 and a first cloth layer as recited in claim 13. Accordingly, for at least the foregoing reasons, the Assignee respectfully submits that the first type of chamois taught in Forsyth does not teach or suggest every element in claim 13.

With respect to the second type of chamois, Forsyth teaches interposing a cloth layer 41 (Fig. 19), 74 (Fig. 20) between the Forsyth thin foam layer 36 (Fig. 19), 71 (Fig. 20) and Forsyth foam pads 39, 40 (Fig. 19), 73 (Fig. 20). Because the Forsyth cloth layer 41, 74 is positioned between the Forsyth thin foam layer 36, 71 and the Forsyth foam pads 39, 40, 74, the foam layer does not contact the foam pads as recited in claim 13. Accordingly, for at least the foregoing reasons, the Assignee respectfully submits that the second type of chamois taught in Forsyth does not teach or suggest every element in claim 13.

For at least the foregoing reasons, the Assignee respectfully submits that claim 13 is patentable over Forsyth. Thus, the Assignee respectfully requests that the Examiner withdraw the rejection of claim 13 over Forsyth and indicate it as allowable.

Claims 15 and 17 depend from claim 13. Since these claims depend from a patentably distinct independent claim, the dependent claims are themselves patentable. Accordingly, the Assignee respectfully requests the Examiner withdraw the § 102 rejections of these dependent claims and indicate them as allowable. The Assignee makes this statement without reference to or waiving the independent bases of patentability within the dependent claims.

Claim 55 is cancelled, thus rendering its rejection moot

#### **IV. Rejections under 35 U.S.C. § 103**

Claims 14, 18, 19, 50 and 56-58 are rejected under 35 U.S.C. § 103(a) as unpatentable over Forsyth. Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Forsyth in view of U.S. Pat. Publication No. 2005/0210570 to Garneau (hereinafter "Garneau"). For at least the following reasons, the Assignee respectfully disagrees with these rejections.

Claim 16 depends from claim 13. As discussed in more detail above, Forsyth does not teach every element in amended independent claim 13, and thus also fails to teach every element in claim 16. Garneau is cited by the Examiner for teaching a cloth layer containing an anti-microbial material as recited in claim 16. Like Forsyth, Garneau does not appear to teach or suggest a chamois having various cloth and foam layers arranged as described in claim 13. More particularly, Garneau does not appear to teach or suggest a chamois having both a foam layer contacting a first and second cloth layer and a foam pad contacting the foam layer and the second cloth layer. Thus, Garneau does not remedy the deficiencies of Forsyth. Accordingly, for at least the foregoing reasons, the Assignee respectfully submits that claims 13 and 16 are patentable over Forsyth and Garneau, alone or combined, and respectfully requests that the Examiner indicate them as allowable.

Claims 14, 18, 19, 50 and 57 depend from claim 13. Since these claims depend from a patentably distinct independent claim, the dependent claims are themselves patentable. Accordingly, the Assignee respectfully requests the Examiner withdraw the § 103 rejections of these dependent claims and indicate them as allowable. The Assignee makes this statement without reference to or waiving the independent bases of patentability within the dependent claims.

Claims 56 and 58 are cancelled, thus rendering their rejections moot.

#### **V. Conclusion**

After entry of the above listing of claims and remarks, claims 13-19, 50 and 57 remain in the application. In accordance with the amendments and arguments set forth herein, the Assignee respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance.

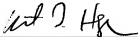
This Response is filed with a petition for a three month extension of time and a Request for Continued Examination. Accordingly, please charge Deposit Account No. 04-1415 in the total amount of 1,920.00 for the extension of time fee of \$1,110.00 and the Request for Continued Examination fee of \$810.00. The Assignee believes no further fees or petitions are

due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Should any issues remain that the Examiner believes may be dealt with in a telephone conference, the Examiner is invited to contact the undersigned at 303-629-3400.

Signed this 9<sup>th</sup> day of February 2009.

Respectfully submitted,



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